



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2013-0033; FRL-9822-5]

Approval and Promulgation of Implementation Plans; Maryland; Revisions to the State Implementation Plan Approved by EPA through Letter Notice Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: EPA is taking final action on administrative changes to the Maryland State Implementation Plan (SIP) which EPA had previously approved through a Letter Notice action. The revision removes an obsolete Consent Decree for the Allegany County Board of Education, Beall Jr./Sr. High School. EPA has determined that this action falls under the “good cause” exemption in the Administrative Procedure Act (APA), which authorizes agencies to dispense with public participation and which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA).

DATE: This action is effective [insert Federal Register publication date].

ADDRESSES: EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2013-0033**. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection

Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford at (215) 814-2108, or by email at frankford.harold@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is taking final action on administrative changes to the Maryland SIP. On November 15, 2012, Maryland submitted a SIP revision requesting removal of an obsolete Consent Decree for the Allegany County Board of Education, Beall Jr./Sr. High School since the school's coal-fired boiler was demolished in 2007. EPA determined that the revision was a minor SIP revision without any substantive changes and complied with all applicable requirements of the CAA and EPA regulations concerning such SIP revisions. EPA approved this revision through Letter Notice to Maryland dated February 6, 2013 consistent with the procedures outlined in EPA's Notice of Procedural Changes on SIP processing published on January 19, 1989 at 54 FR 2214 and consistent with the procedures outlined in an April 6, 2011 memo from Janet McCabe, Deputy Assistant Administrator for the Office of Air and Radiation, regarding Regional Consistency for the Administrative Requirements of State Implementation. Today's action completes the February 6, 2013 administrative amendment to the SIP by removing the Consent Order entry for Beall Jr./Sr. High School from the 40 CFR 52.1070(d) table.

II. EPA Action

EPA is taking final action on administrative changes to the Maryland SIP. EPA has determined that today's action falls under the "good cause" exemption in the section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). With respect to the SIP revision described above, today's administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment for this administrative action is "unnecessary" because the revisions are administrative and non-substantive in nature. Immediate notice of this action in the Federal Register benefits the public by providing the public notice of the updated Maryland SIP. Approval of these revisions will ensure consistency between state and Federally-approved rules. EPA has determined that these changes will not relax the SIP or adversely impact air emissions.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country

located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act (CRA) (5 U.S.C. 801 et seq.), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. 5 U.S.C. 808(2). In taking action on this SIP revision, EPA already made such a finding. Thus, the SIP revisions announced in this notice became effective upon EPA's February 6, 2013 Letter Notice to Maryland. Today's administrative action simply codifies a provision which is already in effect as a matter of law in Federal and approved state programs. EPA will submit a report containing this action and other information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this action in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of

judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to remove the obsolete Consent Decree for the Allegany County Board of Education, Beall Jr./Sr. High School may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: May 28, 2013.

W. C. Early,
Acting Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart V—Maryland

§ 52.1070 [Amended]

2. In § 52.1070, the table in paragraph (d) is amended by removing the entry for Beall Jr./Sr. High School.

[FR Doc. 2013-13718 Filed 06/10/2013 at 8:45 am; Publication Date: 06/11/2013]